

THE EFFECTS OF THE UNIFORMED SERVICES FORMER SPOUSES'
PROTECTION ACT ON MILITARY RETIREMENT BENEFITS

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ABSTRACT

THE EFFECTS OF THE UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT ON MILITARY RETIREMENT BENEFITS, by MAJ Catherine E. Altherr, USA, 81 pages.

The Uniformed Services Former Spouses' Protection Act (USFSPA) allows state courts to treat military retirement pay as property for possible division in matters of divorce. The problem is that several military and veterans' organizations believe this law to be discriminatory towards military members and seek legislative reform. Thus, the central research question is: Should Congress amend the Title 10, U.S. Code, Section 1408, USFSPA, to ensure just compensation for both military members and military spouses in court-ordered divorce settlements? This thesis examines the divorce laws affecting the military retirement system in comparison to the laws affecting all other federal retirement systems, the real-world applications of the USFSPA by state courts in all 50 states and the District of Columbia, and perceived inequities of the act.

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ACRONYMS

ABA	American Bar Association
ARA	American Retirees Association
CIA	Central Intelligence Agency
CSEA	Child Support Enforcement Act
CSRS	Civil Service Retirement System
DC	District of Columbia
DFAS	Defense Finance and Accounting Service
ERISA	Employee Retirement Income Security Act of 1974
EXPOSE	Ex-Partners of Servicemen for Equality
FERS	Federal Employees Retirement System
GATT	General Agreement on Tariffs and Trades
IRS	Internal Revenue Service
NAUS	National Association for Uniformed Services
NCOA	Noncommissioned Officers Association
NMFA	National Military Family Association
NMWA	National Military Wives Association
PBGC	Pension Benefit Guaranty Corporation
SBP	Survivor Benefit Plan
TSP	Thrift Savings Plan
TREA	The Retired Enlisted Association
UCMJ	Uniform Code of Military Justice

USFSPA	Uniformed Services Former Spouses' Protection Act
VA	Veterans Administration
WISE	Women in Search of Equity

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CHAPTER 1

INTRODUCTION

Brief Introduction

Prior to 1982, federal law precluded state courts from dividing military retirement pay in court-ordered divorce settlements. Military retirement pay was defined as reduced compensation for reduced services (income), while a civilian pension was defined as deferred compensation for past services (property). Although a civilian pension could be divided as marital or community property in court-ordered divorces, military retirement pay could not. This often left former spouses in financial distress. Military spouses argued that because of frequent moves they often were unable to develop a career of their own or their own retirement benefits. Several organizations urged Congress to recognize the military spouses' unpaid contributions to marriage.

The Uniformed Services Former Spouses' Protection Act (USFSPA) was enacted in 1982. This law allows state courts to treat military retirement pay as property for possible division in matters of divorce. The USFSPA has been amended six times since its enactment and continues to raise controversy among members of the military, civilian organizations, and Congress.

Problem Statement

Several military and veterans' organizations numbering over three million members believe that the USFSPA is discriminatory and contradictory. These organizations seek legislative reform and are supported by some members of Congress. On the other hand, several organizations believe that the USFSPA is just, and their beliefs are supported by other members of Congress to maintain equity for the former military

spouse. The quality of the military retirement benefit package has a great effect on recruitment, retention, and morale. Military members need to be informed on the truths and myths of the USFSPA and how it compares to other civilian and federal retirement systems. If the law needs to be changed then military members should have an active role in pursuing its reform by persuading representatives in Congress to seek USFSPA reform.

Thesis Question

Should Congress amend the Title 10, U.S. Code, Section 1408, USFSPA, to ensure just compensation for both military members and military spouses in court-ordered divorce settlements?

Subordinate Questions

1. How do state courts interpret the USFSPA? The law states that military retirement pay may be treated as property in matters of divorce. It is not written that it will be in all cases. It is important to know if state courts are interpreting the law as mandatory or on a case-by-case basis.

2. Are there similar laws for other federal employees and civilians? It is important to know the similarities and differences to determine if military members are discriminated against.

Significance of the Study

The purpose of this thesis is to explore the real-world applications of the USFSPA by state courts on military retirement in comparison to civilian and other federal retirement plans.

Background

One of the most attractive incentives of a military career is the exceptional retirement system that provides for a monthly retirement income, exchange and commissary privileges, medical care, veteran benefits, and the Survivor Benefit Plan (SBP). The military retirement system is based on the need to maintain an effective, combat ready force, by rewarding those who have served their country. The military retirement system is defined as noncontributory in the sense that military personnel make no direct contribution from their monthly pay toward the cost of their retirement. The Congress makes annual appropriations to meet current benefit payments for the military retirement system. Because the military retirement system is not “vested,” a service member who is separated from active duty prior to reaching retirement eligibility forfeits credit for years served unless the member enters the Federal Civil Service or remains in the reserve forces. Basic pay is the only element of military compensation upon which retirement pay is computed. Service members receive 50 percent of their basic pay after completing twenty years of military service.

On 1 December 1976, Colonel Richard McCarty filed a petition in the Superior Court of California requesting dissolution of a nineteen-year marriage from Patricia McCarty. Under California law, a court granting dissolution of a marriage must divide the community property of all parties. On 23 November 1977, the Superior Court dissolved the marriage and decided that the military pension was subject to division under the California Community Property Law. In addition to awarding Patricia McCarty spousal support (alimony), the court ordered Richard McCarty to pay 45 percent of his retirement pay to his former spouse for life.

On 30 September 1978, Colonel Richard McCarty retired from the Army after twenty years of active duty and began receiving retirement pay. He then filed a petition in the California Court of Appeal to review the Superior Court's decision on grounds that federal law preempt state community property law, but the court denied his petition for a hearing because the appellant had invoked the jurisdiction of the California courts over both his marital and property rights. Richard McCarty then sought review from the United States Supreme Court.

On 26 June 1981, the United States Supreme Court held, in *McCarty v. McCarty*, that federal law precludes a state court from dividing military retirement pay pursuant to state community property laws.¹ The Supreme Court ruled that retirement pay continues to be the personal entitlement of the retiree. Further, the court found that dividing a military pension threatened grave harm to "clear and substantial" federal interests, such as providing for the retired service member in old age and encouraging enlistment and reenlistment, orderly promotions, and a youthful military. The Supreme Court viewed military pensions different from civilian ones due to the fact that retired military were subject to active duty recall, continued to fall under the Uniform Code of Military Justice (UCMJ), and were restricted on some post-service employment. Although the Supreme Court ruled that federal law prevailed in this case and the California Superior Court's decision was reversed, it also invited Congress to review this policy to ensure fairness to the military spouse.

Between 1981 and 1982, members of Congress introduced four bills to authorize state courts to treat military retirement pay as property.² On 8 September 1982, the USFSPA became public law under the Department of Defense Authorization Act of

1983.³ The act attracted little attention at the time it was passed, probably because it was a rider to recurring legislation. The Department of Defense Authorization Bill was introduced to authorize appropriations for fiscal year 1983 for the Armed Forces. The USFSPA had an effective date of 1 February 1983, but was retroactive to 25 June 1981, and therefore reversed the *McCarty* decision. The USFSPA applies to all military members in the regular or reserve components, who are active duty, retired, or serving in the reserve forces. Although the USFSPA has been amended six times since its enactment,⁴ it basically states the following:

1. State courts may treat disposable military retirement pay as marital or community property for purposes of a divorce settlement.
2. Pension division jurisdiction limited to a state where the service member is domiciled, has consented to jurisdiction, or resides not due to assignment.
3. State courts cannot force a military member to retire, but may order the member to start paying alimony or child support before retirement.
4. State courts can order direct payment through the Defense Finance and Accounting Service (DFAS) if the marriage lasted over ten years during military service and does not exceed 50 percent of disposable pay or 65 percent with the addition of child support or alimony.
5. State courts permitted to order SBP coverage.
6. A former spouse who remarries before age fifty-five loses SBP eligibility.
7. A former spouse who remarries will continue to receive payment of retirement pay.

8. The treatment of military pensions as marital property limited to payments due on or after 21 June 1981.

9. Payments of retirement pay provided to the abused ex-spouses of military personnel whose entitlement to retirement pay has been terminated or denied.

The American Retirees Association (ARA) is comprised of active, reserve, and retired members of the Uniformed Services across the United States. It was founded in 1984 for the exclusive purpose of addressing what it considered to be inequities in the USFSPA.⁵ The ARA believes the law has created a number of issues that need to be resolved, including:

1. Military retirement pay is treated as income for tax purposes, but as property in divorce proceedings.

2. Some federal retirement programs terminate the payment to a former spouse upon remarriage before a certain age unlike the USFSPA.

3. The computation of retirement pay is not based on the rank or pay grade of the member at the time of divorce, but at the rank or pay grade when the service member retires.

4. Nothing in the USFSPA precludes multiple marriages and multiple USFSPA payments; a civilian can repeatedly marry into the military to receive portions of several retirement plans.

5. The former spouse is not subject to any restraints the retired military member has, such as adherence to UCMJ, involuntary recall, and possible restraints on foreign travel.

6. The service member is required to serve a minimum number of years in order to be eligible to receive retirement pay, but there is no minimum length of marriage required of a spouse to qualify for USFSPA payments.

The National Military Family Association (NMFA) was established in 1969. The NMFA represents the interests and concerns of military family members. The NMFA educates military families about their rights and benefits and informs politicians about the special challenges of military life. The NMFA strongly believes that military retirement pay should continue to be treated as property by state courts and court ordered payments should not be affected by the remarriage of a former spouse. The NMFA feels that the military spouse gives up a great deal of control over their own lives when they marry service members. The only financial asset most military spouses have is the retirement benefits earned during a marriage.

Twelve unsuccessful bills to amend the USFSPA were introduced by Congress between 1984 and 1999. In 1984, both Senator Jepsen and Representative Aspin proposed that DFAS honor court orders for child support or alimony without regard to whether or not the court order specified that the payments be made from the pension.⁶ In 1985, both Senator Durenberger and Representative Schroeder proposed an automatic entitlement of a portion of retirement pay to former spouses of retired military personnel.⁷ Again in 1989, Representative Schroeder proposed an automatic entitlement of a portion of retirement pay to former spouses of retired military personnel.⁸ Also in 1989, Representative Dornan proposed the termination of retirement pay to the former spouse upon remarriage.⁹ In 1991, Representative Dornan proposed the termination of retirement pay to the former spouse upon remarriage as well as basing the award on the

pay grade and length of service of the military member at the time of divorce.¹⁰ In 1992, Representative Schroeder proposed automatic SBP coverage to a former spouse if the military member died before 14 November 1986 or if the former spouse was divorced before that date and is currently not eligible.¹¹ In 1996, Representative Scarborough proposed the award to the former spouse be based on the pay grade and length of service of the member while married to the former spouse. The bill would have also required the former spouse to apply for his or her share of retirement pay within one year from the date of the final decree.¹² In 1997 and 1999, Representative Stump proposed the termination of retirement pay to the former spouse upon remarriage, basing the award on the pay grade and length of service of the military member at the time of divorce, prohibits courts from treating as part of a member's disposable retirement pay amounts which have been waived from such pay in order to receive veterans' disability compensation, and a two-year time limit for reapportionment of a member's monthly disposable retirement pay.¹³ Although these bills were not passed, organizations continue to seek USFSPA reform.

Assumptions

Many, if not all, of the groups in favor of or opposed, to the USFSPA offer purely emotional justifications for their assertions based on personal experience.

Limitations

Research will not address early retirement programs or separation bonuses.

Definition of Terms

Allowances. Money or something equivalent furnished in addition to the prescribed rates of pay. An allowance is given to provide for expenses for which a

soldier's pay is considered inadequate, such as travel allowance, quarters allowance, clothing allowance, and subsistence allowance.

Annuity. A payment of a fixed sum of money at regular intervals of time.

Basic Pay. Pay (other than allowances) of a member of the Army based on grade and length of service.

Community Property. Property owned in common by husband and wife as a result of its having been acquired during the marriage by means other than inheritance or a gift to one spouse, each spouse holding a one-half interest in the property.

Community Property States. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Contributory. An employee benefit plan to which both employers and employees make monetary contributions.

Disposable Pay. Disposable pay does not include existing debts to the government, retirement pay forfeited due to court-martial; VA disability pay; Civil Service pay; SBP premiums when the former spouse is the beneficiary; and amounts held for federal, state, or local income taxes.

Domicile. The place at which a person is physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

Equitable Distribution. The division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for a fair, but not necessarily equal, allocation of the property between the spouses.

Marital Property. In all other states not listed above, property that is acquired from the time when a marriage begins until one spouse files for divorce.

Noncontributory. An employee benefit plan to which only the employer makes monetary contributions.

Pension. A fixed sum paid regularly to a person by an employer as a retirement benefit.

Survivor Benefit Plan. This plan provides income protection to spouses, dependent survivors, or former spouses of service members who die in retirement or on active duty after reaching retirement eligibility.

Vested. A fully and absolutely established right, benefit, or privilege that is not dependent on any contingency or condition. It is not subject to forfeiture if employment terminates before retirement.

Summary

Since the enactment of the USFSPA, state courts may treat military retirement pay as property in matters of divorce. Several military and veterans' organizations believe that the USFSPA is discriminatory and contradictory. The purpose of this thesis is to determine if the USFSPA should be amended to ensure just compensation for both military members and military spouses in court-ordered divorce settlements.

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¹McCarty v. McCarty, 453 U.S. 210 101 S. Ct. 2728 (1981).

²Congress, House, US 97th Congress, H.R. 1711 by Representative Kent Hance, (5 February 1981); Congress, House, US 97th Congress, H.R. 3039 by Representative Patricia Schroeder, (6 April 1981); Congress, Senate, US 97th Congress, S 1453, by

Senator Deconcini (9 July 1981); Congress, Senate, US 97th Congress, S 2248 by Senator Tower (22 March 1982).

³Department of Defense Authorization Act of 1983, Title X Former Spouses Protection (PL 97-252, 8 September 1982).

⁴Department of Defense Authorization Act of 1984 (PL 98-94, 24 September 1983); Department of Defense Authorization Act of 1985 (PL 98-525, 19 October 1984); Department of Defense Authorization Act of 1986 (PL 99-145, 8 November 1985); National Defense Authorization Act for FY 87 (PL 99-661, 14 November 1986); National Defense Authorization Act for FY 88 and 89 (PL 100-180, 4 December 1987); and National Defense Authorization Act for FY 91 (PL 101-510, 5 November 1990).

⁵American Retirees Association [homepage] accessed on 26 August 2000; available from <http://americanretirees.com>; Internet.

⁶Congress, House, US 98th Congress, H.R. 5021 by Representative Aspin (6 March 1984); and Congress, Senate, 98th Congress, S. 2411 by Senator Jepsen (13 March 1984).

⁷Congress, House, US 99th Congress, H.R. 2365 by Representative Patricia Schroeder (6 May 1985); Congress, House, US 99th Congress, H.R. 2472 by Representative Patricia Schroeder (13 May 1985); and Congress, Senate, US 99th Congress S. 1169 by Senator Durenberger (20 May 1985).

⁸Congress, House, US 101st Congress, H.R. 3776 by Representative Patricia Schroeder (20 November 1989).

⁹Congress, House, US 101st Congress, H.R. 572 by Representative Dornan (20 January 1989).

¹⁰Congress, House, US 102nd Congress, H.R. 2200 by Representative Dornan (2 May 1991).

¹¹Congress, House, US 102nd Congress, H.R. 4138 by Representative Patricia Schroeder (29 January 1992)

¹²Congress, House, US 104th Congress, H.R. 3408 by Representative Scarborough (7 May 1996).

¹³Congress, House, US 105th Congress, H.R. 2537 by Representative Stump (24 September 1997); and Congress, House, US 106th Congress, H.R. 72 by Representative Stump (6 January 1999).

¹⁴

CHAPTER 2

LITERATURE REVIEW

Brief Introduction

In order to determine whether the USFSPA should be amended, first the similarities and differences between the laws affecting the military retirement system and other federal retirement systems in matters of divorce must be determined. Second, if state courts are exercising the USFSPA similar to state divorce laws for nonmilitary personnel must be determined. The act itself does not provide for an automatic entitlement to a portion of the member's retirement pay to a former spouse. The review of literature is limited from 1981 to the present based on the proposal of the USFSPA and USFSPA reform.

Literature Summary

This literature review begins with articles written in 1981 and 1982 discussing the intent of the USFSPA enactment to financially assist the former military spouse after divorce and to recognize the contributions homemakers make to marriages. The review then discusses the 1994 book *Divorce and the Military*, which describes how the USFSPA unfairly discriminates against military members. The four articles in the *Florida Bar Journal*, *Army Lawyer*, *ABA*, and *Army Times* are reviewed. These articles, written in 1998, attempt to have an objective view of the USFSPA. The next seven statements reviewed were taken from a conference held at the House of Representatives, Committee on Veterans' Affairs, on the garnishment of benefits paid to veterans for child support and other court-ordered obligations, 5 August 1998. The Retired Officers Association, Women in Search of Equity (WISE), Retired Enlisted Association,

American Legion, Noncommissioned Officers Association (NCOA), and the National Association for Uniformed Services (NAUS) are all organizations seeking USFSPA reform. These organizations are clearly biased in their opinion to the unfairness of the USFSPA towards retired military personnel. The ABA was also represented at this conference. Their opinion, although meant to be impartial, clearly leans towards the former spouse. Finally, the review concludes with an article published in 2000, published in the *Army Times* stating that divorce laws should apply to all husbands, military included. Key issues in the source review are termination of payments to a former spouse upon remarriage, computation of awards to a former spouse not based on the pay grade at the time of divorce, the right to have multiple beneficiaries for the SBP, and disability pay restrictions.

Source Review

On 25 September 1981 Judy Mann of the *Washington Post* wrote that Representative Hance introduced a bill to divide military retirement pay. Mann states that this bill is a major step in providing a dependable source of income to former spouses whose sacrifices at home enabled the military partnership to work. Mann quotes the Ex-Partners of Servicemen for Equality (EXPOSE) Association claims that: “We have women who are being evicted, women who are being forced to sell their homes, women who are on food stamps, women on welfare. They are in financial distress and they don’t know which way to turn.” Mann also quotes the National Military Wives Association (NMWA) as stating, “While the military lifestyle offers unique advantages, it also requires special sacrifices and contributions not necessary to civilian life. We firmly believe that a young wife weighing her future as a partner in service to her country will

question why so much is demanded of her when she has been denied a stake in that partnership should her marriage dissolve.”

On 8 September 1982 Judy Mann wrote that the most significant piece of legislation benefiting women to come out of the 97th Congress was approved. By allowing military retirement benefits to be divided by state courts in divorce settlements, Congress had corrected a situation that left thousands of former military spouses in jeopardy. The enactment of the USFSPA is another step towards economic recognition of the contributions homemakers make to marriages. Mann argued that because of frequent moves a wife generally could not establish an independent career that would qualify her for a pension. She also argued that marriage is an economic partnership in which the wives shoulder the family responsibilities and make social contributions that are beneficial to their husbands’ careers. Mann states that this act protects the future of America’s homemakers.

In 1994, Frank Ault and Marsha Thole wrote *Divorce and the Military*. They state that the USFSPA in theory itself does not provide for an automatic entitlement to a former spouse, but in practice the act is mandated. Ault and Thole believe that the USFSPA unfairly discriminates against military members who do not enjoy protection under the law equal to civilians.

Ault and Thole believe there is an anomaly created by the definition of military retirement pay. Military retirement pay is defined in federal statutes as income in tax courts and bankruptcy courts, but as property in divorce courts. This anomaly only applies to the military.

Ault and Thole state that there is a disparity between the military and federal employees. The payments to a former spouse terminate upon remarriage of the former spouse, unlike all other federal government retirement and survivor benefit systems. Under the USFSPA, a former spouse can acquire more than one award of retirement pay by divorcing after a remarriage and remarrying again. They also believe that the act ignores fault in rendering awards and that the civilian spouse is always treated as the innocent party.

According to Ault and Thole, a continuing controversy is that the USFSPA does not specify the computation and subsequent award of retirement pay is to be based on the rank and or pay grade of the member at the time of divorce. Courts have interpreted the law to read that the amount to be awarded to the former spouse is to be based on the military member's rank and years of service at the time of retirement. They believe that the ex-spouse is unfairly benefiting from the increased retirement pay as a result of longevity or promotions.

Ault and Thole state that some state courts are dividing the military member's disability compensation in violation of the Supreme Court and USFSPA itself. Disability pay is exempt under federal law from being divided.

Ault and Thole further add that there are duties, obligations, and restrictions, which apply to the military retiree but not to the spouse. Retirees are subject to active duty recall, the UCMJ, and some postretirement employment. The former spouse is not subject to any of these obligations or restrictions. Also, a former spouse may be entitled to the military member's retirement pay after a marriage of any length, yet the military member has to serve at least twenty years to qualify for retirement pay.

Ault and Thole believe that because there is no statute of limitations on the time during which a former spouse may seek a share of a member's retirement pay then the divorced military member lives in uncertainty for a lifetime on whether or not the ex-spouse may file. They state that not only is this unfair to retired members, but it is inconsistent with common legal practice.

Finally, Ault and Thole believe the USFSPA to be antiquated. When the law was enacted in 1982, the typical civilian spouse of a military member was nonworking. Given the constantly growing presence of women in the workplace, the "plight of the military spouse" is no longer valid.

In December 1998 Peter Cushing, wrote in "Navigating the Former Spouse Protection Act," *Florida Bar Journal*, that there is a perception of unfairness by both the military retiree and the nonmilitary spouse concerning both the substance and the application of the USFSPA. He believes that the fundamental promise of a twenty-year, one-half-pay retirement benefit to service members should be acknowledged as withdrawn by the United States and eliminated from all recruitment materials. Given the high divorce rate in the military, the provisions of the USFSPA should be explained to all members upon enlistment and reenlistment.

In February 1998 "Family Law Notes," the *Army Lawyer*, wrote that some states refuse to divide any retirement pension unless the retirement is vested, reasoning that there is no property interest to divide until the pension vests.

On 13 April 1998 Marshal Willick, ABA, wrote in "ABA Response to the National Defense Authorization Act for 1998" that the "ten-year rule" should be abolished. Currently, the military pay center will not make direct payment in cases where

the military service and marriage overlapped for less than ten years. Some lawyers incorrectly believe the ten-year rule prohibits division of retirement benefits when the military service and marriage overlapped for less than ten years. Willick recommends that any award legitimately made under state law should be enforceable through the pay center, whether the marriage lasted for five or twenty years.

Willick also believes the jurisdiction rule in the USFSPA should be eliminated. The provisions were enacted out of concern that forum-shopping spouses might go to a state that sues their interests. Willick states that this law is not necessary because no state permits division of property without sufficient minimum contacts to satisfy constitutional concerns. The practical result has been that in some cases retirement benefits are not ever brought before any court that has jurisdiction over both the parties and their property.

Willick does believe that survivor benefits should be divisible among multiple beneficiaries. The current “one-only” form of the statute has led to both the wrongful deprivation of survivorship interests, and the accidental overcompensation of former spouse survivors who had less than 50 percent of the military retirement pay during the member’s life, but are named beneficiaries of the full sum of the SBP.

Another reform to the SBP should be the automatic translation of “spouse” to “former spouse.” Most members and spouses have no idea that the designation of the spouse as beneficiary does not simply continue postdivorce, since the premiums are still being paid and the former spouse is still shown as the beneficiary.

Willick believes another reform to the SBP should eliminate the termination of SBP upon remarriage before age fifty-five. The provision presumes, unfairly, that it is a

husband's role to provide for a wife and that a wife somehow does not "deserve" to continue receiving her own property, if she chooses to marry someone else at a later date. It is simply not anyone else's business whether a former member or former spouse chooses to remarry; the division of property rights upon divorce should be permanent.

Willick believes that the allocation of the SBP premium should be allowed. Currently, the SBP premium is taken "off the top" of disposable retirement pay. The law should be revised to allow for allocation of the premium to the member, to the former spouse, or to come off the top.

Willick addresses the waiver of regular retirement pay for a disability award. The problem is that when a retiree receives a postdivorce disability award, the "disposable" pay already divided between the member and former spouse is reduced, giving it back to the retiree, no matter what the divorce court ordered. Willick recommends that disability awards should be in addition to longevity pay, not a waiver of longevity retirement pay. He also states that if this can not be done, then a provision prohibiting the conversion of any portion of the disposable retirement pay that has been awarded to a former spouse should be made.

On 31 August 1998 Nick Adde wrote "Benefits for Former Spouses May Change," *Army Times*, that the USFSPA is a subject of trench warfare between retirees and former spouses. He states that the only thing the two sides agree upon is that the law is unfair. Adde tells a story of a retired female sailor and her ex-husband, a former sailor who was kicked out for drug abuse. The female sailor lives below the poverty level in her mother's home while trying to support two children. The father, who remarried, is entitled to 30 percent of his wife's retirement pay.

On the other side, Adde outlines the sacrifices military spouses regularly make, at no compensation, during a military career, according to the NMFA. He tells a story about a former wife of a retired Navy captain whose marriage ended with her husband's affair with a colleague. The spouse received none of his retirement pay because the judge said evidence of the affair was not sufficient enough to prove adultery. The former wife now works in the commissary stacking groceries for minimum wage while her former husband is enjoying their entire jointly earned pension.

Adde also quotes the EX-POSE position against exempting disability pay from divorce settlements. The EX-POSE states that the disability clause in the USFSPA deprives them of what they have been awarded in a court order.

On 5 August 1998 Patrick Kusiak, legal consultant for The Retired Officers Association, describes a conflict of two federal laws that address the garnishment of federal payments to enforce court-ordered child support and spousal support. These two laws are the USFSPA and the Child Support Enforcement Act (CSEA).¹ The USFSPA provides no authority to satisfy child or spousal support obligations from disability retirement pay, but the CSEA includes disability pay. Kusiak states that disability retirement pay should be subject to garnishment for child support, but not for alimony. Kusiak states that some state courts issue orders requiring payments of permanent alimony in an amount equal to the amount of retirement pay that would be payable if the retiree had not received disability compensation. Payments are required even if the recipient former spouse remarries. Because the payments are identified as alimony, they are not considered to violate federal law. Kusiak believes that the USFSPA and the

CSEA should be amended to invalidate any obligation to make court-ordered payment of alimony without regard to economic need or the remarriage of the former spouse.

Kusiak also states a problem with the current SBP under the USFSPA. Current federal law permits a former spouse who receives as little as 10 percent of disposable retirement pay to receive 100 percent of the SBP benefit. In addition, current law does not permit a retired member who has been divorced and remarried to provide any SBP benefit to the retiree's current spouse if SBP is in effect for the retiree's former spouse. Under federal laws that provide survivor benefits for other federal employees, a retiree may provide multiple survivor annuities. His solution to this is to amend federal law related to SBP to permit multiple survivor annuities.

Another problem with the SBP is that since disposable retirement pay already reflects reduction for SBP before any division of retirement pay, the retiree pays the economic burden of SBP even when state courts direct a former spouse to pay a portion. For example, if a former spouse receives 25 percent of disposable retirement pay as marital property and the retiree receives 75 percent, then the retiree is paying 75 percent of the economic burden of SBP and the former spouse is paying 25 percent of the burden. Yet the former spouse receives all of the benefit of SBP participation. His solution to this is to revise the amount of disposable retirement pay to reflect a reduction. In the example above, this would require reducing the former spouse's share of disposable retirement pay from 25 percent to 19.78 percent.

Kusiak addresses the issue of military member's rank and years of service at the time of divorce. The increases in retirement pay as a result of service or promotions after divorce are generally considered the separate property of the member. His solution is to

amend the USFSPA to establish a procedure to permit a state court to equitably divide retirement pay on the basis of rank and years of service at the time of divorce rather than rank and years of service at the time of retirement.

On 5 August 1998 Patricia Bruce, National Director of WISE for Military in Divorce, states that one of her concerns is the manner in which states are dividing military disability in divorces. She states that an application for disability is scrutinized very carefully, and the military veteran or retiree must undergo strict physical examinations to determine eligibility. If awarded disability benefits, a retiree is not permitted to receive concurrent payment of both regular retirement pay and disability retirement pay. The retiree must waive regular retirement pay in order to receive tax-exempt disability pay. Under Federal law, these funds are authorized for a military retiree who was injured or suffers illness as a result of their active service. Bruce reiterates Kusiak's statement that although the USFSPA cannot satisfy child or spousal support obligations from disability retirement pay, the CSEA can.

On 5 August 1998 Mark Olanoff, Legislative Director for the Retired Enlisted Association (TREA), states examples of retirees who have been abused by the system. One "horror" story is of an Army master sergeant, who divorced his wife after eighteen years of marriage. The ex-wife married a man nine months older than his own son. This man was convicted of breaking into the retiree's house and was in prison when the ex-wife married him. Now, a percentage of the retired master sergeant's retirement goes to support his ex-wife and her new husband.

Olanoff supports a former spouse entitlement to up to 50 percent of retirement pay, in addition to whatever child support and other amounts the courts deem necessary.

However, Olanoff believes that payments to the former spouse should cease upon remarriage, VA disability compensation should be adequately protected, and divorce decrees should be final. Civilian divorce settlements do not allow one former spouse to reopen the divorce claim or to change the amount received because of a promotion in the workplace. Military retirees deserve equity.

On 5 August 1998 D. Michael Duggan, American Legion, states that military retirement pay should be treated as income, rather than property, and state divorce courts should apportion retirement pay as alimony and child support in accordance with state domestic laws and regulations. Duggan also believes that the period of time following separation or divorce should be limited to two years within which an ex-spouse can assert claim for a portion of military retirement pay for alimony or child support. Finally, he states that the CSEA should not allow garnishment of disability pay.

Duggan states that members of the armed services are obliged to accept a highly disciplined and controlled life. Service members are subject to UCMJ and are also subject to service-connected injuries and ailments, which may be so severe and debilitating to last a lifetime, may lead to military disability retirement, or may impact on employment earnings in a second career. Former spouses are not subject to recall, the UCMJ, or service-connected injuries or to any restrictions on post-service employment.

Finally, Duggan states that with civilian pensions, the courts look at the total circumstances of the marriage and deliver their judgments. But this is not the case with military personnel.

On 5 August 1998 Michael Ouellette, Director of Legislative Affairs for the NCOA, states that there is no doubt that the major complaint made by NCOA members

and others looking for assistance and relief in conjunction with a divorce action is the mere existence of the USFSPA. Their frustrations occur during or after entering into divorce proceedings because they are not aware of the USFSPA or do not fully understand the impact on their future income until it is too late. The law seems to be a well-kept secret that keeps military members “dancing in the dark” during the course of their military careers. Consequently, they never fully realize that the military retirement pay benefit is not entirely their own and is being earned, many times equally, by their marital partner.

Ouellette also believes that the financial impact of the USFSPA is greater on the enlisted member simply because of the differing levels of actual retirement pay. The division of a percentage of an enlisted member’s retirement pay along with additional alimony and child support requirements virtually leaves that retiree financially destitute in many cases.

Ouellette describes the inconsistencies with regarding retirement pay as property. If military retirement pay is considered property, then why does it terminate upon the death of the former spouse and not passed on to surviving heirs? If retirement pay is property, then why is an ex-military spouse required to participate in SBP in order to continue the property award upon death? Why are earned retirement pay property awards to ex-spouses based on the service members’ status or rank at the time of retirement instead of the time of divorce? Ouellette believes that military retirement pay is only considered property when there is no cost to the government. If a “property” classification requires costs to the government, then it (retirement pay) is considered something other than property.

Ouellette recommends that the USFSPA awards be terminated upon remarriage just as SBP annuities are terminated upon remarriage prior to age fifty-five. He also recommends an establishment of a ten-year marriage requirement to be even eligible under the USFSPA. Finally, Ouellette recommends that all awards under the act be based at the grade and income of the military member at the time of divorce and not at the time of retirement.

On 5 August 1998 Benjamin Butler, NAUS, stated that his organization's goal is to ensure that the USFSPA is fair to both parties involved in a divorce. Butler states that divorced military veterans are the only U.S. citizens who have their retirement pay classified by the federal government as property in matters of divorce and "income" for taxation by the Internal Revenue Service (IRS). This shows equal justice under law does not exist for military members.

Butler states that courts are circumventing the USFSPA's protection of disability protection by ignoring federal law, awarding it as alimony without regard for source, and garnishing it under the Social Security Act, Title 42, which is in conflict with Title 10.

On 5 August 1998 Marshal Willick, ABA, recommends that military retirement benefits be treated in a manner consistent with the property distribution laws of the states. All of the states have taken the view that marriage is, among other things, an economic partnership in which both parties contribute toward the common good, although sometimes in different ways. The states recognize that partnership by considering both parties to a marriage to be owners of that property which is acquired during the marriage, including pension and retirement benefits. Willick states that his own research has shown that in most military marriages, the retirement benefits are more valuable than all the

other property accumulated during the marriage. Because there is usually so little other property acquired in a military marriage, the quality of life that each party can reasonably expect to have after divorce is directly dependent upon the certainty of receipt of his or her share of that asset.

On the issue of terminating spousal payment upon remarriage, Willick believes the proposal would essentially eliminate the status of military retirement benefits as property, which would preempt the law of every state in the Union. The primary effect of this proposal would be to increase the number of former military spouses who received no share of the most valuable property right created during their marriages. This would wreak havoc upon the balancing of interests involved in state court divisions of marital property throughout the country and would increase the difficulty and uncertainty of litigation everywhere. The ABA clearly stands that all deferred compensation derived from federal employment should be subject to state property and divorce law.

Willick next considers the issue of restricting the spousal share to the length of service and rank of the military member at the time of divorce. He again believes that treating this one asset differently, as a matter of federal preemption, may distort the ability of state divorce courts to achieve equity between spouses. This proposal does not appear to implicate any federal interest that would warrant interference with the domestic relations laws of the states.

Willick next considers the issue of restricting the retirement pay division to actions within two years of divorce. He believes the current proposal is a pretty clear effort by a group of “haves,” most of whom obtained their spouse’s share of valuable property by silent omission from decrees of divorce, to make sure that their former

spouses can never even ask a judge to determine whether they have been unfairly dispossessed. Willick submits that since there is no legitimate federal interest in allowing one group of former spouses to purloin the property of the other group, Congress should not interfere any further in the equitable mechanisms set out in state divorce laws.

On the issue of exempting disability pay from child support or alimony garnishment, Willick believes that this will delay support payments to children, force poor people to consume scarce public resources to hunt down those members, and then have those members jailed until they “voluntarily” pay the sums owed. Only if Congress granted disability payments in addition to retirement pay, should those benefits be exempt for most claims.

In conclusion, the ABA position does not support any amendment to the USFSPA. The proposals would preempt the marriage and divorce laws of the states, without any evidence of a necessity of doing so in order to serve a federal interest.

On 24 January 2000 Doris Mozley, Justice and Equality for the Military Wife, wrote that most “disability” pay is not combat related. Most of it is for the ravages to the body that come with aging. She does not believe the American public supports a law that allows a man to not fulfill his obligation of alimony or child support if he gets some military doctor to say he is disabled. Mozley wrote that disability pay is nothing more than a tax break.

Summary

Although the aforementioned literature provides useful information to consider for the development of the research design, many if not all of the groups for or opposed to the USFSPA offer purely emotional justifications for their assertions based on personal

experience. This thesis is an attempt to analyze the USFSPA to ensure just compensation for both military members and military spouses in court-ordered divorce settlements.

¹Child Support Enforcement Act (PL 104-193, 22 August 1996).

CHAPTER 3

METHODOLOGY

Brief Introduction

The technique used to determine if Congress should amend the USFSPA to ensure just compensation for both military members and military spouses is a comparison of how others are affected by court-ordered divorce settlements under other federal and civilian retirement plans.

The Plan

The first criterion used will be to determine what laws govern state courts in determining divorce settlements. State legislation determines the distribution of marital assets in a divorce decree unless exempted by explicit federal legislation. For example, the military is governed solely by the USFSPA under Title 10, U.S. Code. Because this is a federal statute, state courts must adhere to the regulations in the USFSPA regardless of state laws. This criterion will depict what laws govern other federal retirement plans as well as the state law effecting federal and civilian employees in matters of divorce.

The second criterion used will be the type of retirement plan provided to an employee. Retirement plans are either contributory or noncontributory by the employee and may vest after a period of time. For example, the military has a noncontributory plan that does not vest. In other words, it is subject to forfeiture if service is terminated before retirement. Some states refuse to divide any retirement pension unless the retirement is vested, reasoning that there is no property interest to divide until the pension vests. This criterion will examine how state courts divide such plans.

The third criterion used will determine if laws exist for other retirement systems that require a former spouse to be married a minimum number of years prior to receiving a portion of the retirement benefit. For example, there is no minimum requirement to divide military retired pay.

The fourth criterion used will be to determine what percentage a former spouse may be awarded under different retirement plans. For example, the DFAS may garnish up to 50 percent of military retirement pay and up to 65 percent with the addition of spousal or child support a military retiree.

The fifth criterion used will determine if other federal plans terminate upon the remarriage of the former spouse and compare these to local state laws. For example, military retirement pay does not terminate upon the remarriage of the former spouse.

The sixth criterion used will determine if disability pay is divided in state courts for other retirement plans. For example, military disability pay is exempt from division under the USFSPA, but not under the CSEA. The CSEA provides authority to satisfy child or spousal support obligations from disability retired pay.

The seventh criterion used will determine if laws exist for other retirement systems that require a former spouse to be married a minimum number of years for SBP eligibility. For example, there is no minimum requirement to award a former spouse SBP rights.

The eighth criterion used will determine if other retirement plans support multiple SBP beneficiaries. For example, a state court can order mandatory SBP benefits for a former military spouse, but only one beneficiary is allowed.

The ninth criterion used will determine if other federal plans terminate SBP eligibility upon the remarriage of the former spouse and compare these to local state laws. For example, SBP eligibility to a former military spouse terminates upon their remarriage before the age of fifty-five.

Finally, the laws of all fifty states and the District of Columbia to show how military retirement pay and the USFSPA is interpreted in matters of divorce will be summarize

Summary

Although a number of other comparison methods exist, the method used in this thesis will determine if USFSPA is equivalent to laws affecting other federal and civilian retirement plans. To obtain the necessary information on the selected criteria, The U.S. Code and the laws and legislation of all fifty states and the District of Columbia will be research. The only retirement systems that are affected by federal legislation are: The Uniformed Services Retirement Systems, Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), Foreign Service Retirement and Disability Fund, Judicial Retirement System, and the Central Intelligence Agency (CIA) Retirement and Disability System. The divorce laws affecting these federal pensions can be found in the U.S. Code. The divorce laws affecting all fifty states can be found in their respective state code or by state case law in the absence of a state code.

CHAPTER 4

ANALYSIS

Brief Introduction

The technique used to determine if Congress should amend the USFSPA is a comparison of existing legislation affecting other federal and civilian retirement plans in matters of divorce. Currently, state courts determine the distribution of marital assets unless exempted by explicit federal legislation. The only retirement systems that are affected by federal legislation are: the Uniformed Services Retirement Systems, CSRS, FERS, Foreign Service Retirement and Disability Fund, Judicial Retirement System, and the CIA Retirement and Disability System. The divorce laws affecting these federal pensions can be found in U.S. Code. The divorce laws affecting all fifty states and the District of Columbia can be found in their respective state code or by state case law in the absence of state code. The comparison criteria used for federal and state divorce legislation are:

1. Governing law
2. Type of retirement plan
3. Minimum number of years married to receive annuity
4. Maximum garnishment allowed
5. Termination of annuity upon remarriage
6. Disability pay
7. Minimum SBP eligibility

8. Number of SBP beneficiaries

9. Termination of SBP eligibility upon remarriage

Uniformed Services

The Uniformed Services consist of the armed forces (Army, Navy, Air Force, Marine Corps, and Coast Guard), the Commissioned Corps of the National Oceanic and Atmospheric Administration, and of the Public Health Service. The Uniformed Services are governed under Title 10, U.S. Code, which allows state courts to treat retirement pay as property in court-ordered divorce settlements. The Uniformed Services Retirement Plans are noncontributory plans.¹ There is no minimum requirement for a former spouse to be married to a service member to be awarded a percentage of an annuity, but DFAS will not make direct payment to a former spouse whose marriage lasted less than ten years during military service. The maximum percentage DFAS will garnish will not exceed 50 percent of disposable pay or 65 percent with the addition of child support or alimony. The annuity award does not terminate upon the remarriage of the former spouse. Under Title 10, U.S. Code, disability pay can not be treated as property in court-ordered divorce settlements. The military SBP allows for only one beneficiary and a court order can award SBP participation for a former spouse. There is no minimum marriage requirement for a former spouse to be eligible for SBP, but eligibility will terminate upon the remarriage of the former spouse before the age of fifty-five years.

Civil Service Retirement System and Federal Employees Retirement System

Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) are contributory retirement plans that cover approximately three million

federal employees.² The Military Retirement System, CSRS, and FERS constitute 97 percent of participants in all federal plans.³ The Congress closed CSRS to new participants at the end of 1983, and employees hired since 1983 generally are covered by FERS. Employees of both CSRS and FERS are governed under Title 5, U.S. Code, which allows state courts to treat retirement pay as property in court-ordered divorce settlements. A court order can divide the CSRS or FERS annuity or divide a refund of retirement contributions if employee terminates employment before retirement. Title 5, U.S. Code, does not require a minimum number of years married for a former spouse to qualify for an annuity, does not terminate the annuity to the former spouse upon remarriage, nor does it have any restrictions on disability pay. Although Title 5, U.S. Code, does not regulate what percentage of retirement pay may be garnished, the Director of the Office of Personnel Management will not honor payments that exceed the amount payable to the retiree after deductions for taxes and insurance.

A monthly survivor annuity may be payable to a former spouse after the death of the CSRS or FERS employee if provided by a court order and married for a minimum of nine months. If the former spouse is provided survivor benefits by a court order, then those benefits terminate upon the remarriage before age fifty-five and the marriage did not last thirty years. Under CSRS, if a full-survivor annuity is awarded to a former spouse then it equals 55 percent of retirement pay before deductions and no other survivor annuity can be awarded. Under CSRS, if a partial survivor benefit is awarded to a former spouse it could be at any percentage and there can be multiple beneficiaries as long as the total does not exceed 55 percent. Under FERS, if a full-survivor annuity is awarded to a former spouse then it equals 50 percent of retirement pay before deductions

and no other survivor annuity can be awarded. Under FERS, if a partial survivor benefit is awarded to a former spouse it must be 25 percent of retirement pay. Therefore, under FERS, the maximum number of beneficiaries for a survivor benefit plan is two.

Although if a CSRS or FERS employee's full-survivor annuity has been blocked by a court order to a former spouse and a current spouse is not covered, then the employee in good health may elect an insurable interest annuity for the current spouse. The spouse covered by the insurable interest annuity would be eligible to receive the same percentage of annuity under CSRS and FERS, but only after it had been reduced by a percentage that goes up as the difference between the employee's age and that of the designated survivor increases. The reduction in annuity is 10 percent if the spouse is less than five years younger than the employee, 15 percent if the spouse is ten years younger, 20 percent if the spouse is fifteen years younger, 25 percent if the spouse is twenty years younger, 30 percent if the spouse is twenty-five years younger, 35 percent if the spouse is thirty years younger, and 40 percent if the spouse is thirty or more years younger than the employee.⁴

Foreign Service

The Foreign Service is governed under Title 22, U.S. Code, which allows state courts to treat retirement pay as property in court-ordered divorce settlements. The Foreign Service Retirement and Disability Fund is a contributory plan providing retirement, disability, and survivor benefits to employees of the Foreign Service.⁵

This paragraph outlines the retirement benefits for former spouses married to a Foreign Service employee hired before 1984 under the Foreign Service Retirement and Disability Fund. The former spouse is eligible to receive 50 percent of the participant's annuity directly from the Secretary of State if married throughout the twenty years of

required service. If not married for the entire twenty years then the former spouse is entitled to a share of the retirement benefits. A former spouse does not qualify for benefits if they remarry before the age of fifty-five or not married to the participant at least ten years during service. If the Foreign Service employee receives a disability annuity, then the former spouse is entitled to the amount based on if the employee received regular retirement pay. Therefore, if the former employee does not receive a regular annuity but receives disability pay, then the former spouse can be awarded a percentage based on if the former employee retired after the required twenty years. Although, if the former employee receives disability pay in addition to a regular annuity then the former spouse is not eligible for any additional pay received from disability. A former spouse is entitled to full-survivor annuity if the spouse does not marry before the age of fifty-five and was married to the employee for at least ten years during service. Because the former spouse is entitled to the full-survivor annuity, only one beneficiary is allowed under the Foreign Service Retirement and Disability Fund.

This paragraph outlines the retirement benefits for former spouses married to a Foreign Service employee after 31 December 1983 under the Foreign Service Pension System. There is only one significant change to benefits to former spouses, which affects survivor annuities. Under this retirement plan, the former spouse can receive a percentage of the survivor annuity. Therefore, the new plan allows multiple SBP beneficiaries.

Judicial Retirement System

The Judicial Retirement System is governed under Title 28, U.S. Code, which allows state courts to treat retirement pay as property in court-ordered divorce

settlements. The Judicial Retirement System is a noncontributory plan providing retirement and disability benefits for judges or justices of the United States. These employees may also elect to participate in the Judicial Survivors' Annuities System, which is a contributory plan.⁶

The Director of Administrative Office of the United States Courts will pay an annuity (in whole or in part) to a former spouse pursuant to court decrees of divorce.⁷ Title 28, U.S. Code, does not require a minimum number of years married for a former spouse to qualify for an annuity, does not terminate the annuity to the former spouse upon remarriage, nor does it have any restrictions on disability pay.

For a former spouse to qualify for survivor annuities, the former spouse must be married to a judicial official for at least nine months and not remarry before age fifty-five. The former spouse can be awarded survivor annuities by a divorce degree and multiple beneficiaries are allowed as long as the total allowance to the beneficiaries does not exceed 55 percent of the average annual salary of the employee.⁸

Central Intelligence Agency

The CIA Retirement and Disability System is governed by Title 50, U.S. Code, which allows state courts to treat retirement pay as property in court-ordered divorce settlements. The CIA Retirement and Disability System is a contributory plan providing retirement, disability, and survivor benefits for employees of the CIA.⁹ The Director of the CIA will pay up to 50 percent of an annuity to a former spouse pursuant to court decrees of divorce. To be eligible for a percentage of an annuity, a former spouse must have been married to an employee for a minimum of ten years and not remarry before becoming fifty-five years of age. If the CIA employee receives a disability annuity then

the former spouse is entitled to the amount based on if the employee received regular retirement pay.

For a former spouse to qualify for survivor annuities, the former spouse must be married to the CIA employee for at least nine months and not remarry before age fifty-five. The former spouse can be awarded survivor annuities by a divorce decree and multiple beneficiaries are allowed as long as the total allowance to the beneficiaries does not exceed 55 percent of the average annual salary of the employee.

Alabama

Divorce laws for the state of Alabama are governed under Title 30, Code of Alabama. All vested and non-vested pensions are marital assets subject to equitable distribution only if the parties have been married for at least ten years during which the retirement was being accumulated, Section 30-2-51. In addition to the division of pensions, Alabama courts can award child support and alimony. Alimony is terminated if the recipient remarries or cohabitates with another person, Section 30-2-55.

Alaska

Divorce laws for the state of Alaska are governed under Title 25, Alaska Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Alaska Statutes allow the courts to divide retirement benefits when dividing property, Section 25.24.160. Although the Statutes do not specifically address a non-vested pension, Alaska case law supports division of a non-vested pension. In *Wainwright v. Wainwright*, 888 P.2d 762 (Alaska 1995), the Alaska Supreme Court held that a non-vested pension should be divided as part of property division during a divorce. In addition to the division of pensions, Alaska courts can award child support and alimony.

Alaska Code does not have specific guidelines on termination of alimony. In *Musgrove v. Musgrove*, 821 P.2d 1366 (Alaska 1991), the Alaska Supreme Court held that remarriage does not automatically terminate an award of alimony.

Arizona

Divorce laws for the state of Arizona are governed under Title 25, Arizona Revised Statutes. All vested and non-vested pensions are community property subject to division. Although Arizona Revised Statutes do not specifically address pensions to be divided as part of property division, Arizona case law does. In *DeGryse v. DeGryse*, 661 P.2d 185 (Arizona 1983), the Arizona Supreme Court held that military retirement benefits can be divided as community property. In *Chaney v. Chaney*, 699 P.2d 398 (Arizona 1986), Arizona Supreme Court held that a non-vested military pension was community property. In addition to the division of pensions, Arizona courts can award child support and alimony. Unless otherwise agreed in writing, alimony terminates upon the remarriage of the party receiving it, Section 25-327.

Arkansas

Divorce laws for the state of Arkansas are governed under Title 9, Arkansas Code. Only vested pensions are marital assets subject to equitable distribution. Although Arkansas Code does not specifically address pensions to be divided as part of property division, case law does. In *Holaway v. Holaway*, 16 S.W.3d 302 (Arkansas 2000), the Arkansas Court of Appeals held that military retirement pay is not an asset that exists to divide upon divorce until it vests. In addition to the division of pensions, Arkansas courts can award child support and alimony. Alimony is terminated if the recipient remarries another person, Section 9-12-312.

California

Divorce laws for the state of California are governed under Division 7, California Family Code. California is a community property state where each spouse holds a one-half interest in pensions acquired during the marriage, Section 2610. Although the Code does not specifically address non-vested pension, case law does. In *Casas v. Thompson*, 720 P.2d 921 (California 1976), the California Supreme Court held that non-vested pensions were subject to division. In addition to the division of pensions, California courts can award child support and alimony. The California Family Code does not automatically terminate an award of alimony upon the cohabitation or remarriage of the spouse receiving it, Section 4323.

Colorado

Divorce laws for the state of Colorado are governed under Title 14, Colorado Revised Statutes. All pensions are marital assets subject to equitable distribution, Section 14-10-113. Although the Code does not specifically address non-vested pension, Colorado case law does. In *re Marriage of Beckman and Holm*, 800 P.2d 1376 (Colorado 1990), non-vested military pensions constitute marital property subject to division. In addition to the division of pensions, Colorado courts can award child support and alimony. Unless otherwise agreed in writing alimony is terminated upon the remarriage of the party receiving it, Section 14-10-122.

Connecticut

Divorce laws for the state of Connecticut are governed under Title 46b, Connecticut General Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address

pensions to be divided as part of property division, case law does. In *Krafick v. Krafick*, 663 A.2d 365 (Connecticut 1995), the Connecticut Supreme Court held that vested pension benefits are property to be distributed upon marital dissolution. In *Bender v. Bender*, 758 A.2d 890 (Connecticut 2000), the Connecticut Appellate Court held that non-vested pension benefits were divisible. In addition to the division of pensions, Connecticut courts can award child support and alimony. Connecticut General Statutes do not state that alimony terminates upon the remarriage. In *Wichman v. Wichman*, 714 A.2d 1274 (Connecticut 1998), an ex-husband moved to terminate alimony on the grounds that ex-wife's cohabitation with another person. The Appellate Court denied termination because the divorce degree precluded termination of alimony for any reason other than remarriage or death.

Delaware

Divorce laws for the state of Delaware are governed under Title 13, Delaware Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Gaines v. Gaines*, 615 A.2d 531 (Delaware 1992), the court held that a vested pension was marital property subject to division. In *Lynam v. Lynam*, 513 A.2d 1319 (Delaware 1986), the court held that a non-vested pension was marital property subject to division. In addition to the division of pensions, Delaware courts can award child support and alimony. Alimony is terminated if the recipient remarries or cohabitates with another person, Section 13-1512.

District of Columbia

Divorce laws for the District of Columbia (DC) are governed under Title 16, DC Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, the case law does. In *De Liedekerck v. De Liedekerck*, 635 A.2d 339 (DC 1993), the court held that vested pensions are divisible. In *Barbour v. Barbour*, 464 A.2d 915 (DC 1983), the Court stated that there is no requirement for a pension to vest for property division. In addition to the division of pensions, DC courts can award child support and alimony. The DC Code does not have specific guidelines on termination of alimony. In *DeGrazia v. DeGrazia*, 741 A.2d 1057 (DC 1999), the Court held that alimony may be terminated upon remarriage of the recipient.

Florida

Divorce laws for the state of Florida are governed under Title 6, Florida Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 6-61.076. In addition to the division of pensions, Florida courts can award a former spouse child support and alimony. Florida Statutes do not specify the termination of alimony upon remarriage. In *Calderon v. Calderon*, 730 So.2d 400 (Florida 1999), the court allowed modification to a divorce decree to terminate alimony upon the remarriage of recipient.

Georgia

Divorce laws for the state of Georgia are governed under Title 19, Georgia Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of

property division, the case law does. In *Andrews v. Whitaker*, 453 S.E.2d 735 (Georgia 1995), the court held that vested and unvested retirement benefits are marital property subject to equitable division. In addition to the division of pensions, Georgia courts can award child support and alimony. Unless otherwise agreed in writing, alimony terminates upon the remarriage of the party receiving it, Section 19-6-5.

Hawaii

Divorce laws for the state of Hawaii are governed under Title 580, Hawaii Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, the case law does. In *Cassiday v. Cassiday*, 716 P.2d 1133 (Hawaii 1986), the court held that retirement benefits pursuant to a divorce decree are divisible. In *Stouffer v. Stouffer*, 867 P.2d 226 (Hawaii 1994) the court held that non-vested retirement benefits are subject to division. In addition to the division of pensions, Hawaiian courts can also award child support and alimony. Hawaii Statutes do not specify the termination of alimony upon remarriage, but divorce decrees can include the clause; *Vorfeld v. Vorfeld*, 804 P.2d 891 (Hawaii 1991).

Idaho

Divorce laws for the state of Idaho are governed under Title 32, Idaho Code. Military retirement benefits are community property subject to division, Section 32-712. Although Idaho Code does not specifically address non-vested pensions to be divided as part of property division, case law does. In *Shill v. Shill*, 765 P.2d 140 (Idaho 1988), non-vested pensions are community property subject to division. In addition to the division of pensions, Idaho courts can award child support and alimony. Idaho Code

does not specify the termination of alimony upon remarriage. In *Terteling v. Payne*, 957 P.2d 1387 (Idaho 1998), the court denied former husbands request to terminate alimony due to former wife's remarriage. The court held that no substantial or material change in former wife's financial circumstances occurred as result of her remarriage.

Illinois

Divorce laws for the state of Illinois are governed under Chapter 750, Illinois Compiled Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *re Marriage of Johnston*, 562 N.E.2d 1004 (Idaho 1990), the court held that pension benefits are property interests regardless of whether they are matured, vested, non-vested, contributory, or noncontributory. In addition to the division of pensions, Illinois courts can award child support and alimony. Alimony is terminated if the recipient remarries or cohabitates with another person, Section 5-510.

Indiana

Divorce laws for the state of Indiana are governed under Title 31, Indiana Code. Only vested pensions are marital assets subject to equitable distribution. Although Indiana Code does not specifically address pensions to be divided as part of property division, case law does. In *Warren v. Warren*, 563 N.E.2d 633 (Indiana 1990), the court held that the USFSPA authorized states to award portion of former service member's military retirement pay to spouse who was married to service member for less than ten years during which service member was performing creditable service. In *Harris v. Harris*, 690 N.E.2d 742 (Indiana 1998), the court held that unvested pension interests

were not marital property subject to division. In addition to the division of pensions, Indiana courts can award child support and alimony. In *Roberts v. Roberts*, 644 N.E.2d 173 (Indiana 1994), the court held that remarriage of spouse who is receiving alimony is not sufficient to establish substantial change of circumstances to warrant modification of alimony. Alimony can only be modified or revoked upon showing a change of financial change of circumstances so substantial and continuing as to make it unreasonable to continue receiving support, Section 31-15-7-3.

Iowa

Divorce laws for the state of Iowa are governed under Title 598, Iowa Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Pensions in general are held to be marital assets, subject to division in dissolution cases, just as any other property, Section 411.13. Although Iowa Code does not specifically address non-vested pensions to be divided as part of property division, case law does. In *re Marriage of Curfman*, 446 N.W.2d 88 (Iowa 1989), the court held that non-vested pensions are subject to division. In addition to the division of pensions, Iowa courts can award child support and alimony. It is common in Iowa for alimony provisions in a divorce decree to include automatic terminate upon remarriage of the recipient spouse. Although if it does not, subsequent remarriage does not automatically terminate an alimony obligation, but it does shift the burden to the recipient to show extraordinary circumstances to justify its continuation. In *re Marriage of Ales*, 592 N.W.2d 698 (Iowa 1999), the court held that cohabitation did not constitute substantial change of circumstances justifying reduction or termination of spousal support obligations.

Kansas

Divorce laws for the state of Kansas are governed under Title 60, Kansas Statutes. All vested and non-vested military retirement pay is subject to equitable distribution per Kansas Statutes, Section 23-201(b). In addition to division of pensions, Kansas courts can award child support and alimony. Awards of alimony will not exceed 121 months, Section 60-1610.

Kentucky

Divorce laws for the state of Kentucky are governed under Title 35, Kentucky Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Kentucky Revised Statutes allow the courts to divide retirement benefits when dividing property, Section 403.190. Although the Statutes do not specifically address a non-vested pension, Kentucky case law does. In *Carranza v. Carranza*, 765 S.W.2d 32 (Kentucky 1989), the court held that non-vested military retirement pay is subject to division. In addition to division of pensions, Kentucky courts can award child support and alimony. Unless otherwise agreed in writing, alimony is terminated upon the remarriage of the receiving party.

Louisiana

Divorce laws for the state of Louisiana are governed under Title 6, Louisiana Revised Statutes Annotated. All vested and non-vested pensions are community property subject to division. Although Louisiana Revised Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Little v. Little*, 513 So.2d 464 (Louisiana 1987), the court held that vested and non-vested pensions are subject to division. In addition to the division of pensions, Louisiana courts can award

child support and alimony. The obligation of spousal support is terminated upon the remarriage or cohabitation of the receiving party, LA C.C Art. 115.

Maine

Divorce laws for the state of Maine are governed under Title 19-A, Maine Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Lunt v. Lunt*, 522 A.2d 1317 (Maine 1987), the court held that a vested military pension was divisible as marital property. In *Slotler v. Wood*, 687 A.2d 636 (Maine 1996), the court held that a non-vested military pension was subject to division. In addition to the division of pensions, Maine courts can award child support and alimony. Maine Statutes do not automatically terminate alimony upon the remarriage of the receiving spouse, but the divorce decree must state any limitations for termination, Section 951-A. In *Schultz v. Dellaire*, 678 A.2d 46 (Maine 1996), the court denied a motion to terminate alimony based on the remarriage of the ex-spouse. In the original divorce decree, the ex-husband was ordered to pay alimony until the ex-wife's death. The court ruled that the ex-husband did not prove that there was a substantial change of circumstances justifying his motion.

Maryland

Divorce laws for the state of Maryland are governed under Sections 7, 8, 11, and 12, Maryland Family Law Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Maryland Family Code allows the courts to divide pensions as marital property, Section 8-205. Although Maryland Family Law does not specifically address non-vested pensions to be divided as part of property division, case

law does. In *Ohm v. Ohm*, 431 A.2d 1371 (Maryland 1981), the court held that retirement benefits, whether or not vested, matured, or contributory, is marital property subject to division. In addition to the division of pensions, Maryland courts can award child support and alimony. Unless the parties agree otherwise, alimony terminates on the marriage of the recipient, Section 11-108.

Massachusetts

Divorce laws for the state of Massachusetts are governed under Chapter 208, Massachusetts General Laws. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 34. In addition to the division of pensions, Massachusetts courts can award child support and alimony. Massachusetts General Laws do not address the termination of alimony, but case law does. In *Keller v. O'Brien*, 652 N.E.2d 589 (Massachusetts 1995), the court terminated alimony on the remarriage of the recipient. The court is required to end alimony absent proof of some extraordinary circumstances, established by recipient spouse, warranting its continuation.

Michigan

Divorce laws for the state of Michigan are governed under Chapter 552, Michigan Compiled Laws. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 552.18. In addition to the division of pensions, Michigan courts can award child support and alimony. Although alimony does not automatically terminate upon remarriage of the recipient, trial court has authority to modify or terminate alimony upon change of circumstances, Section 552.23.

Minnesota

Divorce laws for the state of Minnesota are governed under Chapter 5188, Minnesota Statutes. All pensions are marital assets subject to equitable distribution, Section 518.58. Although Minnesota Statutes do not specifically address non-vested pensions, case law does. In *Deason v. Deason*, 611 N.W.2d 369 (Minnesota 2000), the court held that non-vested pensions are marital property subject to division. In addition to the division of pensions, Minnesota courts can award child support and alimony. Unless otherwise agreed in writing, alimony terminates upon the remarriage of the party receiving it, Section 518.64.

Mississippi

Divorce laws for the state of Mississippi are governed under Title 93, Mississippi Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although Mississippi Code does not address property division, case law does. In *Rennie v. Rennie*, 718 So.2d 1091 (Mississippi 1998), the court held that a vested military pension was marital property subject to division. In *Black v. Black*, 741 So.2d 299 (Mississippi 1999), the court held that a non-vested military pension was marital property subject to division. In addition to the division of pensions, Mississippi courts can award child support and alimony. Periodic alimony ceases upon the remarriage of the receiving spouse. Mississippi recognizes three types of alimony: lump sum, rehabilitative periodic, and periodic. Lump sum alimony is a fixed amount that is not subject to modification; *McDonald v. McDonald*, 683 So.2d 929 (Mississippi 1996). Rehabilitative alimony is for a fixed period of time and is modifiable; *Hubbard v. Hubbard*, 656 So.2d 124 (Mississippi 1995). Periodic alimony does not have a fixed

termination date, but automatically ceases upon the remarriage of receiving spouse;
Armstrong v. Armstrong, 618 So.2d 1278 (Mississippi 1993).

Missouri

Divorce laws for the state of Missouri are governed under Chapter 452, Missouri Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. All pensions are marital assets subject to equitable distribution, Section 452.330. Although Missouri Statutes do not specifically address non-vested pensions, case law does. In *Fairchild v. Fairchild*, 747 S.W.2d 641 (Missouri 1988), the court held that a non-vested military pension is marital property subject to division. In addition to the division of pensions, Missouri courts can award child support and alimony. Unless otherwise agreed in writing, the obligation to pay alimony terminates upon the remarriage of the receiving party, Section 452.370.

Montana

Divorce laws for the state of Montana are governed under Title 40, Montana Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although Montana Code does not specifically address the division of pensions as marital property, case law does. In *re Marriage of Cooper*, 793 P.2d 810 (Montana 1990), the court held that a vested military pension was marital property subject to division. In *re Marriage of Barker*, 870 P.2d 86 (Montana 1994), the court held that a non-vested military pension was marital property subject to division. In addition to the division of pensions, Montana courts can award child support and alimony. Unless otherwise agreed in writing, the obligation to pay alimony terminates upon the remarriage of the receiving party, Section 40-4-208.

Nebraska

Divorce laws for the state of Nebraska are governed under Title 42, Nebraska Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 42-366. In addition to the division of pensions, Nebraska courts can award child support and alimony. Unless otherwise agreed in writing, the obligation to pay alimony terminates upon the remarriage of the receiving party, Section 42-365.

Nevada

Divorce laws for the state of Nevada are governed under Chapter 125, Nevada Revised Statutes. Nevada is a community property state where each spouse holds a one-half interest in pensions acquired during the marriage. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Gemma v. Gemma*, 778 P.2d 429 (Nevada 1989), the court held that vested and non-vested pensions were community property subject to division. In addition to the division of pensions, Nevada courts can award child support and alimony. Unless otherwise ordered by the court, alimony terminates upon the remarriage of the receiving spouse.

New Hampshire

Divorce laws for the state of New Hampshire are governed under Chapter 458, New Hampshire Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 458:16-a. In addition to the division of pensions, New Hampshire courts can award child support and alimony. Generally, remarriage of a spouse receiving alimony does not automatically terminate the paying spouse's obligation to make payments, but rather leaves such determination to discretion of trial court or master; *Williams v. Williams*, 531 A.2d 351 (New Hampshire 1987).

New Jersey

Divorce laws for the state of New Jersey are governed under Title 2A, New Jersey Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although New Jersey Statutes do not specifically address pensions in the division of property, case law does. In *Castiglioni v. Castiglioni*, 471A.2d 809 (New Jersey 1984), the court held that a military pension was marital property subject to division. In *Whitfield v. Whitfield*, 535 A.2d 986 (New Jersey 1987), the court held that a non-vested military pension was subject to division. In addition to the division of pensions, New Jersey courts can award child support and alimony. Although permanent and limited duration alimony terminates upon the remarriage of the receiving spouse, rehabilitative and reimbursement alimony do not, Section 2A34-25. Rehabilitative alimony permits a short-term award from one party in a divorce to enable dependent spouse to complete preparation necessary for economic self-sufficiency, and ceases when dependent spouse is in a position of self-support. Reimbursement alimony is alimony granted to a supporting spouse for the financial contribution he or she made to the other spouse's successful professional training. In *Smith v. Smith*, 540 A.2d 1348 (New Jersey 1988), the court held rehabilitative and reimbursement alimony are subject to modification upon change of circumstances.

New Mexico

Divorce laws for the state of New Mexico are governed under Chapter 40, New Mexico Statutes. New Mexico is a community property state where each spouse holds a one-half interest in pensions acquired during the marriage. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Berry v. Meadows*, 713 P.2d 1017 (New Mexico 1986), the court awarded the ex-wife a

portion of her ex-husband's vested military pension, as well as a portion of his non-vested and unmatured civilian pension. In addition to the division of pensions, New Mexico courts can award child support and alimony. There are no specific guidelines in New Mexico Statutes for the termination of alimony. In *Cherpelis v. Cherpelis*, 914 P.2d 637 (New Mexico 1996), the court held that alimony should terminate after remarriage of the recipient, but leaves room for the recipient to demonstrate extraordinary conditions form continued support. The court also held that cohabitation did not warrant a change in alimony.

New York

Divorce laws for the state of New York are governed under Article 13, New York Domestic Relations Law. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Domestic Relations Laws do not specifically address the division of pensions, case law does. In *Carney v. Carney*, 669 N.Y.S.2d 577 (New York 1998), the court held that a vested military pension was marital property subject to division. In *Burns v. Burns*, 618 N.Y.S.2d 36 (New York 1994), the court held that non-vested pensions are subject to equitable distribution. In addition to the division of pensions, New York courts can award child support and alimony. New York Statutes mandate modification of alimony judgments on the recipient spouse's remarriage, Section 248.

North Carolina

Divorce laws for the state of North Carolina are governed under Chapter 50, North Carolina General Statutes. Marital property subject to division includes all vested

and non-vested pension, retirement, and other deferred compensation rights, and vested and non-vested military pensions eligible under the federal USFSPA, Section 50-20(b). In addition to the division of pensions, North Carolina courts can award child support and alimony. Alimony is terminated if the recipient remarries or cohabitates with another person, Section 50-16.9.

North Dakota

Divorce laws for the state of North Dakota are governed under Chapter 14, North Dakota Century Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although North Dakota Code does not address the division of pensions, case law does. In *Delorey v. Delorey*, 357 N.W.2d 488 (North Dakota 1984), the court held that a non-vested military pension is an asset for purposes of property distribution. In *Johnson v. Johnson*, 617 N.W.2d 97 (North Dakota 2000), the court held that federal military retirement pensions are divisible marital property assets. In addition to the division of pensions, North Dakota courts can award child support and alimony. Generally, remarriage of spousal support recipient terminates unless there are extraordinary circumstances justifying the continuance; *Pearson v. Pearson*, 606 N.W.2d 128 (North Dakota 2000).

Ohio

Divorce laws for the state of Ohio are governed under Title 31, Ohio Revised Code. Only vested pensions are marital assets subject to equitable distribution. Ohio Code states that retirement benefits are marital property subject to division, Section 3105.17.1. Although Ohio Code does not specifically address non-vested pensions, case law does. In *Collins v. Collins* 2000 WL 1275238 (Ohio 2000), the court held that a non-

vested military pension was merely an expectancy, one that was contingent on completion of additional years of service. The court held that an expectation of a pension was not marital property subject to division. In addition to the division of pensions, Ohio courts can award child support and alimony. In *Bachelder v. Bachelder*, 2001 WL 109127 (Ohio 2001), the court held that a trial court has the jurisdiction to terminate alimony upon the remarriage of the recipient unless expressly declared in the divorce decree.

Oklahoma

Divorce laws for the state of Oklahoma are governed under Title 43, Oklahoma Statutes. All vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Stokes v. Stokes*, 738 P.2d 1346 (Oklahoma 1987), the court held that vested military retirement pay was marital property subject to division. In *Messinger v. Messinger*, 827 P.2d 865 (Oklahoma 1992), the court held that only vested pensions are subject to division. In addition to the division of pensions, Oklahoma courts can award child support and alimony. Alimony terminates upon the remarriage of the receiving spouse, Section 134.

Oregon

Divorce laws for the state of Oregon are governed under Title 11, Oregon Revised Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Oregon Statutes consider retirement plans or pensions as marital assets subject to division, Section 107.105(f). Although the Statutes do not specifically address non-vested pensions, case law does. In *Matter of Marriage of Richardson*, 769 P.2d 179

(Oregon 1989), the court held that a non-vested pension was marital property subject to division. In addition to the division of pensions, Oregon courts can award child support and alimony. In *re Marriage of Bock*, 15 P.3d 609 (Oregon 2000), the court dismissed a former husband's motion to terminate alimony based on the former wife's remarriage. In Oregon, alimony will only be reduced or terminated if there is a change in economic circumstances. In *re Marriage of Jones*, 2001 WL 80043 (Oregon 2001), the court only reduced the alimony after the paying ex-spouse proved an economic change of the remarried recipient.

Pennsylvania

Divorce laws for the state of Pennsylvania are governed under Title 23, Pennsylvania Consolidated Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Berrington v. Berrington*, 598 A.2d 31 (Pennsylvania 1991), the court held that retirement pension benefits, vested and non-vested, military and civilian, are marital property subject to equitable distribution. In addition to the division of pensions, Pennsylvania courts can award child support and alimony. Remarriage of the party receiving alimony shall terminate the award of alimony, Section 3701.

Rhode Island

Divorce laws for the state of Rhode Island are governed under Title 15, Rhode Island General Laws. All vested and non-vested pensions are marital assets subject to

equitable distribution. Although Rhode Island General Laws do not specifically address the division of pensions, case law does. In *Goodson v. Goodson*, 744 A.2d 828 (Rhode Island 2000), the court held that a vested military pension was marital property subject to division. Rhode case law does not directly address non-vested pensions. In *Stevenson v. Stevenson*, 511 A.2d 961 (Rhode Island 1986), the court, although not necessarily agreeing with, cited that California held that a non-vested, noncontributory pension plan is subject to division. In addition to the division of pensions, Rhode Island courts can award child support and alimony. Alimony automatically terminates upon the remarriage of the receiving spouse, Section 15-5-16.

South Carolina

Divorce laws for the state of South Carolina are governed under Title 20, South Carolina Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions to be divided as part of property division, case law does. In *Tiffault v. Tiffault*, 401 S.E.2d 157 (South Carolina 1994), the court held that a vested military pension is subject to equitable distribution. In *Ball v. Ball*, 445 S.E.2d 449 (South Carolina 1994), the court held that a non-vested military pension was marital property subject to division. In addition to the division of pensions, South Carolina courts can award child support and alimony. Periodic, rehabilitative, and reimbursement alimony terminates on the remarriage of the supported spouse. Lump sum alimony does not terminate on the remarriage of the supported spouse.

South Dakota

Divorce laws for the state of South Dakota are governed under Title 25, South Dakota Codified Laws. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Codified Laws do not specifically address pensions to be divided as part of property division, case law does. In *Grode v. Grode*, 543 N.W.2d 795 (South Dakota 1996), the court held all pensions, whether vest or non-vested, are marital property subject to distribution. In addition to the division of pensions, South Dakota courts can award child support and alimony. Remarriage does not automatically terminate an alimony obligation, but it does shift the burden to the recipient to show extraordinary circumstances to justify its continuation; *Steffens v. Peterson*, 503 N.W.2d 254 (South Dakota 1993).

Tennessee

Divorce laws for the state of Tennessee are governed under Title 36, Tennessee Code. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 36-4-121. In addition to the division of pensions, Tennessee courts can award child support and alimony. Alimony will automatically terminate upon the remarriage of the recipient, Section 36-5-101.

Texas

Divorce laws for the state of Texas are governed under Title 1, Texas Family Code. Texas is a community property state where each spouse holds a one-half interest in pensions acquired during the marriage, Section 7.003. Although the Code does not specifically address a non-vested pension, case law does. In *Grier v. Grier*, 713 S.W.2d 213 (Texas 1986), the court held that non-vested military pensions are community property subject to division. In addition to the division of pensions, Texas courts can

award child support and alimony. Alimony terminates upon the remarriage of the recipient, Section 8.007.

Utah

Divorce laws for the state of Utah are governed under Title 30, Utah Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Code does not specifically address a non-vested pension, case law does. In *Greene v. Greene*, 751 P.2d 827 (Utah 1988), the court held that vested and non-vested military pensions were marital property subject to division. In addition to the division of pensions, Utah courts can award child support and alimony. Unless a decree of divorce specifically provides otherwise, alimony terminates upon the remarriage of receiving spouse, Section 30-3-5.

Vermont

Divorce laws for the state of Vermont are governed under Title 15, Vermont Statutes. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Code does not specifically address pensions, case law does. Vermont courts are not required to distribute pensions as a marital asset, but instead they must treat it as one factor among many in arriving at a just and equitable distribution of property. In *Myott v. Myott*, 547 A.2d 1336 (Vermont 1988), the court did not divide the husband's pension. Vermont courts follow the rule that vesting is not necessary for a pension to be considered marital property; *Chilkott v. Chilkott*, 607 A.2d 883 (Vermont 1992). In addition to the division of pensions, Vermont courts can award child support and alimony. While it is within the trial court's discretion to terminate alimony upon

remarriage of receiving spouse, it is only one of the factors the court is mandated to consider; *Johnson v. Johnson*, 580 A.2d 503 (Vermont 1990).

Virginia

Divorce laws for the state of Virginia are governed under Title 20, Virginia Code. All vested and non-vested pensions are marital assets subject to equitable distribution, Section 20-107.3. In addition to the division of pensions, Virginia courts can award child support and alimony. Unless otherwise provided by stipulation, alimony terminates upon the remarriage of the receiving spouse, Section 20-109.

Washington

Divorce laws for the state of Washington are governed under Title 26, Washington Revised Code. Washington is a community property state where each spouse holds a one-half interest in pensions acquired during the marriage. Although the Code does not specifically address pensions to be divided as part of property division, case law does. In *Chavez v. Chavez*, 909 P.2d 314 (Washington 1996), the court held that a vested military pension was marital property subject to division. In *Green v. Green*, 986 P.2d 144 (Washington 1999), the court held that a non-vested military pension was subject to division. In addition to the division of pensions, Washington courts can award child support and alimony. Unless otherwise agreed in writing alimony terminates upon the remarriage of the receiving spouse, Section 26.09.170.

West Virginia

Divorce laws for the state of West Virginia are governed under Chapter 48, West Virginia Code. All vested and non-vested pensions are marital assets subject to equitable distribution. Although the Code does not specifically address pensions, case law does. In *Butcher v. Butcher*, 357 S.E.2d 226 (West Virginia 1987), the court held that vested and non-vested military pensions are marital property subject to division. In addition to the division of pensions, West Virginia courts can award child support and alimony. Alimony terminates upon the remarriage of the receiving spouse, except for rehabilitative alimony and alimony in gross. Rehabilitative alimony does not cease upon the remarriage of the payee during the first four-year period. Alimony in gross continues beyond the payee's remarriage.

Wisconsin

Divorce laws for the state of Wisconsin are governed under Chapter 766-767, Wisconsin Statutes. Wisconsin is a community property state where vested and non-vested pensions are subject to division. Although the Statutes do not specifically address pensions, case law does. In *Cook v. Cook*, 560 N.W.2d 246 (Wisconsin 1997), the court held that a vested military pension was marital property subject to division. In *Rodak v. Rodak*, 442 N.W.2d 489 (Wisconsin 1989), the court held that non-vested pensions are subject to division. In addition to the division of pensions, Wisconsin courts can award child support and alimony. Unless otherwise agreed in writing, alimony terminates upon the remarriage of receiving spouse, Section 767.32.

Wyoming

Divorce laws for the state of Wyoming are governed under Title 20, Wyoming Statutes. All vested and non-vested pensions may be marital assets subject to equitable distribution. Although the Statutes do not specifically address pensions, case law does. In *Forney v. Minard*, 849 P.2d 724 (Wyoming 1993), the court held that the determination of whether retirement benefits, vested or non-vested, constitute marital property is at the court's discretion. In *Brockway v. Brockway*, 921 P.2d 1104 (Wyoming 1998), the court held that a non-vested pension was marital property subject to division. In addition to the division of pensions, Wyoming courts can award child support and alimony. Unless otherwise agreed in writing, alimony does not necessarily terminate upon remarriage of the receiving spouse; *Swetich v. Smith*, 802 P.2d 869 (Wyoming 1990).

Summary

The two tables summarize the criteria used to compare the military retirement system against all other federal retirement systems controlled by U.S. Code. These charts also summarize the laws of all fifty states and the District of Columbia to depict how military and civilian pensions are affected in matters of divorce.

TABLE 1

COMPARISON OF FEDERAL RETIREMENT PLANS

Criteria	Military Retirement System	CSRS	FERS	Foreign Service Retirement and Disability Fund	Judicial Retirement System	CIA Retirement and Disability System
Governing Law	US Code Title 10	US Code Title 5	US Code Title 5	US Code Title 22	US Code Title 28	US Code Title 50
Type of Plan	Non-contributory	Contributory	Contributory	Contributory	Non-contributory	Contributory
Minimum Time Married to Receive Annuity	None	None	None	10 Years	None	10 Years
Percentage of Annuity to Former Spouse	Up to 100% DFAS will only honor up to 65%	Up to 100%	Up to 100%	Up to 100% Secretary of State honor up to 50%	Up to 100%	Up to 100% CIA will only honor up to 50%
Termination of Annuity upon Remarriage	No	No	No	Yes Age 55	No	Yes Age 55
Can Disability Pay be Divided	No	Yes	Yes	Yes	Yes	Yes
Minimum Time Married for SBP Eligibility	None	9 Months	9 Months	10 Years	9 Months	9 Months
Number of SBP Beneficiaries	One	Multiple	Two	Multiple under new system	Multiple	Multiple
Termination of SBP Upon Remarriage	Yes Age 55	Yes Age 55	Yes Age 55	Yes Age 55	Yes Age 55	Yes Age 55

TABLE 2**DIVISIBILITY OF RETIREMENT PAY PER STATE**

Criteria	Vested Pensions	Non-vested Pensions	Alimony & Child Support	Alimony Termination Upon Remarriage
Alabama	Yes If married 10 years	Yes If married 10 years	Yes	Yes
Alaska	Yes	Yes	Yes	No
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	Yes
California	Yes	Yes	Yes	No
Colorado	Yes	Yes	Yes	Yes
Connecticut	Yes	Yes	Yes	Yes If stated in decree
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes If stated in decree
Florida	Yes	Yes	Yes	Yes If stated in decree
Georgia	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes If stated in decree

Criteria	Vested Pensions	Non-vested Pensions	Alimony & Child Support	Alimony Termination Upon Remarriage
Idaho	Yes	Yes	Yes	No
Illinois	Yes	Yes	Yes	Yes
Indiana	Yes	No	Yes	No
Iowa	Yes	Yes	Yes	Yes If stated in decree
Kansas	Yes	Yes	Yes	Yes If stated in decree
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes If stated in decree
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes
Michigan	Yes	Yes	Yes	No
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Lump Sum: No Rehabilitative: Maybe Periodic: Yes

Criteria	Vested Pensions	Non-vested Pensions	Alimony & Child Support	Alimony Termination Upon Remarriage
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	No
New Jersey	Yes	Yes	Yes	Permanent & limited: Yes Rehabilitative: No Reimbursement: No
New Mexico	Yes	Yes	Yes	Yes If stated in decree
New York	Yes	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes
Ohio	Yes	No	Yes	Yes
Oklahoma	Yes	No	Yes	Yes
Oregon	Yes	Yes	Yes	No

Criteria	Vested Pensions	Non-vested Pensions	Alimony & Child Support	Alimony Termination Upon Remarriage
Pennsylvania	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Periodic, Rehabilitative, & Reimbursement: Yes Lump Sum: No
South Dakota	Yes	Yes	Yes	No
Tennessee	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes
Vermont	Yes	Yes	Yes	No
Virginia	Yes	Yes	Yes	Yes
Washington	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Rehabilitative: No 4 yrs Alimony in Gross: No All Other: Yes
Wisconsin	Yes	Yes	Yes	Yes
Wyoming	Yes	Yes	Yes	No

¹United States General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data* (Washington, DC: Government Printing Office, 1996), GAO/AIMD-96-6.

²United States General Accounting Office. 1997. *Federal Retirement: Federal and Private Sector Retirement Program Benefits Vary* (Washington, DC: Government Printing Office, 1997), GAO/GGD-97-40.

³United States General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data* (Washington, DC: Government Printing Office, 1996), GAO/AIMD-96-6.

⁴Don Mace, *Retired Federal Employees Handbook 2000* (Richmond, VA: FEDweek LCC 1999).

⁵United States General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data* (Washington, DC: Government Printing Office, 1996), GAO/AIMD-96-6.

⁶Ibid.

⁷Title 28, U.S. Code, Section 377(i).

⁸Title 28, U.S. Code, Section 376.

⁹Title 50, U.S. Code, Section 2021.

CHAPTER 5

CONCLUSION

Brief Introduction

In the previous chapters the author has researched the origin of the USFSPA, the perceived inequities of the act, the comparison of the military retirement system against other federal retirement systems, and the real world application of the USFSPA in all fifty states and the District of Columbia. This chapter will address these perceived inequities, answer the subordinate questions, and answer the main thesis question.

Thesis Question

Should Congress amend the Title 10, U.S. Code, Section 1408, USFSPA, to ensure just compensation for both military members and military spouses in court-ordered divorce settlements?

Conclusions

The first perceived inequity of the USFSPA is that military retirement pay is treated as income for tax purposes, but as property in divorce proceedings. All pension plans are treated as income for tax purposes by the federal government. The U.S. Code allows all federal pension plans to be treated as property in divorce proceedings. The book *Divorce and the Military* states that no comparable federal law exists for civilians. This is not true; the Employee Retirement Income Security Act (ERISA) of 1974 allows civilian pension plans to be treated as property in divorce proceedings. Although people may not like the fact that their pensions are being divided, the military is not singled out nor discriminated against.

The second perceived inequity of the USFSPA is that some federal retirement programs terminate the annuity payment upon the remarriage of the former spouse. Only the Foreign Service and CIA terminate the annuity payment upon the remarriage of the former spouse. The Military Retirement System, CSRS, and FERS, constitute 97 percent of participants in all federal plans.¹ The number of employees in the CIA is classified; therefore the author is unable to provide a percentage of the remaining 3 percent that constitute the number of employees in the Foreign Service and CIA. It is safe to say that a very small percentage of federal employees do terminate annuity payments upon the remarriage of the former spouse. None of the fifty states or the District of Columbia terminates pension awards upon the remarriage of the former spouse.

The third perceived inequity is that the computation of military retirement pay is not based on the rank or pay grade of the member at the time of divorce, but at the rank or pay grade when the service member retires. There are several methods to calculate the present value of a future pension to include the Pension Benefit Guaranty Corporation (PBGC) method, the General Agreement on Tariffs and Trades (GATT) method, and the life expectancy method. All of these methods require the services of a pension appraiser to determine the present value of a future pension. All of these methods include reducing the present value of a pension if it is not vested. Once the value of the pension is determined, the court can order a fixed dollar award to a former spouse payable in lump sum or by installments.

In research of case law, a more common method of dividing vested or non-vested pensions is for the court to award a percentage or fraction of retirement pay to a former spouse. This method does not rely on the services of a pension appraiser to determine the

current value of a pension, and it is determined by a simple formula. This formula includes the number of months of marriage divided by the number of months of employment. This result is multiplied by 50 percent to arrive at a percentage, and that percentage is the former spouse's award. For example, 144 months of marriage (12 years) divided by 240 months of employment (20 years) multiplied by 50 percent, equals 30 percent of retirement pay to the former spouse. Although this method is the simplest, it does not take into consideration the current pay grade of an employee. The former spouse will have no impact on any future promotions or pay increases that increase the value of the pension.

In April 1995 DOD published a proposed rule to amend the Code of Federal Regulations, Title 32, Section 63.² This rule would base the award to a former spouse on the member's rank and years of service at the time of divorce. Although the Code of Federal Regulations nor the U.S. Code was amended to include this proposed rule, DOD recognized that post divorce increases in rank should only be apportioned to the service member.

The fourth perceived inequity is that nothing in the USFSPA precludes multiple marriages and multiple USFSPA payments. A civilian can repeatedly marry into the military to receive portions of several retirement plans. Although this statement is true, it is ridiculous in this author's opinion to amend U.S. code to address this inconceivable ploy. It is difficult to believe that an individual will marry service members every few years in pursuit of pension awards..

The fifth perceived inequity is that a former spouse is not subject to any restraints the retired military member has, such as adherence to UCMJ, involuntary recall, and

possible restraints on foreign travel. Although this statement is true, it is ridiculous to address it at length. The UCMJ is the military's criminal code with the purpose of promoting justice, maintaining good order and discipline, promote efficiency and effectiveness, and strengthening national security. A retired member has been abiding by the UCMJ for the majority of his or her adult life and should have no problems continuing to do so. Many federal employees are subject to involuntary recall and restraints on foreign travel, to include employees of the CIA, Foreign Service, Public Health Service, and judges.

The sixth perceived inequity is that the service member is required to serve a minimum number of years in order to be eligible to receive retirement pay, but there is no minimum length of marriage required of a spouse to qualify for USFSPA payments. All federal employees have to serve a minimum number of years to be eligible to receive retirement pay. Only the CIA and Foreign Service, which is less than 3 percent of all federal employees, have a requirement for a spouse to be married at least ten years to be eligible for pension division. Civilian employees must work a minimum number of years to be eligible to receive retirement pay, but only the state of Alabama has a requirement for a spouse to be married at least ten years to be eligible for pension division.

The seventh perceived inequity is that the spouse is always treated as the innocent party regardless of fault. No other federal retirement plans address marital fault when complying with court orders affecting retirement pay. Most states have taken the position, either through legislation or case law, that misconduct should not be considered in deciding upon distribution of assets acquired during a marriage.³ Only Alabama, Connecticut, Maryland, Massachusetts, Missouri, New Hampshire, South Carolina,

Virginia, and Wyoming consider marital misconduct or fault when dividing property. Although only nine states consider marital fault when dividing property awards, twenty-six states do consider marital fault when awarding alimony, to include: Alabama, Connecticut, DC, Florida, Georgia, Idaho, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New York, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

The eighth perceived inequity is the circumvention of the USFSPA protection of disability pay. The USFSPA does not allow disability pay to be treated as property for division in divorce proceedings, but state courts have the authority to award permanent alimony from disability pay. The Military Retirement System is the only federal retirement system exempt from the division of disability pay. Some state courts may award permanent alimony to a former spouse, but this is the state court's prerogative applicable to all individuals subject to their jurisdiction.

The ninth perceived inequity is the recruitment promise of a twenty-year, half-pay retirement benefit. The only mention of retirement benefits located on the Army recruitment web page is a promise of a retirement plan, which provides for a monthly retirement income after twenty years of creditable service.⁴ The Marine Corps recruitment web page does not address retirement benefits.⁵ The Navy recruitment web page does not address retirement benefits.⁶ The only mention of retirement benefits located on the Air Force recruitment web page is promise of full retirement benefits after twenty years of service.⁷ All of these recruitment declarations are true. This author does not know of one civilian or federal recruitment campaign that promises a retirement plan,

but warns potential employees that if they get divorced in the future, then their former spouse can be eligible to receive a portion of their pension.

The tenth perceived inequity is that some lawyers incorrectly believe that the ten-year rule prohibits division of retirement benefits when the military service and marriage overlap for less than ten years. It is the responsibility of the representing lawyer to understand the laws that affect their clients. It is clearly stated in the USFSPA that the ten-year rule is applicable only for direct payments from DFAS.

The eleventh perceived inequity is that in some cases retirement benefits are not brought before any court because of the jurisdiction rule. The jurisdiction rule was enacted out of concern that forum-shopping spouses might go to a state that suits their interests. The residency requirement for a filing spouse varies from state to state and could encourage forum-shopping. There is no residency requirement for Alaska or South Dakota. A residency requirement of six weeks is required for Idaho and Nevada. A residency requirement of two months is required for Arkansas, Kansas, and Wyoming. A residency requirement of three months is required for Arizona, Colorado, Illinois, Missouri, Montana, Texas, Utah, and Washington. A residency requirement of six months is required in Alabama, California, Delaware, DC, Florida, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, and Wisconsin. A residency requirement of one year is required for Connecticut, Iowa, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, Rhode Island, South Carolina, and West Virginia. Finally, a residency requirement of two years is required in the state of New York.⁸

The twelfth perceived inequity is that the SBP is not divisible among multiple beneficiaries, there is not an automatic translation from spouse to former spouse, SBP terminates upon remarriage of former spouse, and the allocation of premiums are always taken off the top of disposable retirement pay. Survivor benefits should be divisible among multiple beneficiaries. All other federal retirement plans allow for multiple beneficiaries. Currently a court can only award 100 percent or none of the survivor benefits to a former spouse, regardless of the number of years married. This one-only provision penalizes a future spouse of the military member who may be equal or more deserving of survivor benefits. DOD should automatically translate spouse to former spouse if premiums are continually paid. Currently the administrative application to translate the SBP election from spouse to former spouse must be made within one year of a court order, regardless if premiums are being paid. Similar to the administrative application to receive direct payment of an annuity award, the former spouse must apply for the SBP. The lawyer representing the former spouse should be familiar with military benefits and advise his client on the required procedures. SBP eligibility should terminate upon the remarriage of a former spouse prior to age fifty-five. All other federal retirement plans terminate SBP eligibility upon the remarriage of a former spouse prior to age fifty-five. Finally, the law should be revised to allow for allocation of the premium to the member, former spouse, or off the top. Currently, the SBP premium is taken off the top of disposable retirement pay in all cases, with the effect that both parties effectively “pay” for a portion of the SBP benefit. Courts should have the jurisdiction to put the burden on the military member, the former spouse, or both.

The thirteenth perceived inequity is that disability pay is not in addition to retirement pay, but is in lieu of disposable pay. Currently, military personnel are the only federal employees who can not receive disability pay in addition to retirement pay. Because of this inequity, the Military Retirement System is the only federal retirement system that does not allow the division of a pension if disability pay is received in lieu of disposable pay. The military is unique from all other federal systems due to the continued physical demands placed on its members. If a member receives disability pay, then he unfortunately earned it. The only way to ensure just compensation for the former spouse is to provide disability pay in addition to retirement pay.

The fourteenth perceived inequity is that although the USFSPA does not allow the division of disability pay, the CSEA does. Actually, the CSEA does not divide disability pay as property. The CSEA allows garnishment of disability pay for child support and alimony. All federal and civilian employees are subject to CSEA rules.

The fifteenth and final perceived inequity is that disability pay is a scam to deny a former spouse their share of marital assets. To be eligible for disability retirement, a medical evaluation board composed of medical professionals first decides whether a service member has an injury or illness and documents the extent of that injury or illness. The medical evaluation board then decides if the injury or disease is severe enough to call into question a service member's ability to continue on full duty. The medical evaluation board then refers those cases to a physical evaluation board for review. The physical evaluation board composed of mostly line officers reviews a narrative summary written by the medical evaluation board, history and treatment of the injury and illness, referrals to doctors and sick call, and type and frequency of medication. If the physical evaluation

board determines that a service member is unfit to continue to perform their military duties, and finds that the service member is eligible for disability benefits, then the physical evaluation board determines the percentage of the service member's disability compensation.

Recommendations

The following recommendations are provided to ensure just and similar laws for all federal and civilian employees pertaining to court-ordered divorce settlements:

1. U.S. Code governing the Foreign Service and CIA retirement systems should be modified to eliminate the minimum marriage requirement for a former spouse to be eligible for annuity awards.

2. U.S. Code governing the Foreign Service and CIA retirement systems should be modified to eliminate the termination of annuity to former spouse upon remarriage.

3. Title 10, U.S. Code, should be amended to award a former spouse annuity awards based on the rank or pay grade at the time of divorce.

4. Title 10, U.S. Code, should be amended to provide for multiple SBP beneficiaries and allow for allocation of the premium to the state courts discretion.

5. Title 10, U.S. Code, should be amended to allow disability pay in addition to retirement pay.

Areas of Further Research

Further research is recommended in the area of federal Thrift Savings Plan (TSP) programs. Currently, the military does not offer this to its members, but all other federal plans do. In October 2001, the military will introduce the TSP to military members, but will not match payments as they do with all other federal employees.

Summary

In conclusion, there are only a small number of inequities in regard to the USFSPA. All other federal and civilian employees have similar laws affecting their pensions in court-ordered divorce settlements. State courts do not treat the division of military pensions any different than they would treat a civilian pension under their jurisdiction. Military members are not being discriminated against. All federal and civilian pensions should be subject to state community property and equitable distribution laws with minimal federal preemption.

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¹United States General Accounting Office, *Public Pensions: Summary of Federal Pension Plan Data* (Washington, DC: Government Printing Office, 1996), GAO/AIMD-96-6.

²Sullivan, Mark, "Military Pension Division: Crossing the Minefield," *Family Law Quarterly*, (Spring 1997).

³Divorce Source [homepage] accessed on 10 March 2001; available from <http://www.divorcesource.com>; Internet.

⁴Army Recruitment [homepage] accessed on 10 March 2001; available from <http://www.goarmy.com>; Internet.

⁵Marine Corps Recruitment [homepage] accessed on 10 March 2001; available from <http://www.marines.com>; Internet.

⁶Navy Recruitment [homepage] accessed on 10 March 2001; available from <http://www.navy.com>; Internet.

⁷Air Force [homepage] accessed on 10 March 2001; available from <http://www.airforce.com>; Internet.

⁸Divorce Net [homepage] accessed on 4 February 2001; available from <http://www.divorcenet.com>; Internet.

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